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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/082,343

02/26/2002

Kenichi Ueyama

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4098

22850

7590

09/17/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

NOTIFICATION DATE

DELIVERY MODE

09/17/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/082,343	<b>Applicant(s)</b> UEYAMA ET AL.	
	<b>Examiner</b> DAVID COMSTOCK	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,11-19 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,11-19 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05 June 2008 has been entered.

### ***Drawings***

The corrected drawings received on 05 June 2008 are accepted.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrett (3,682,181) in view of Zeoli-Jones (5,480,418; of record).

Garrett discloses a hair warming tool comprising a metal foil water-resistant outermost sheet 1 and a heat generating part 3 (see, e.g., Fig. 1 and col. 2, line 47). The heat generating part comprises iron powder (see, e.g., col. 3, line 45). The device may be used with "oiliness compounds" (e.g. conditioners, see col. 5, lines 56-65). The

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device includes a margin 8 around the heating part. The device is capable of being wrapped around a users hair at least because it can be held against and cover a users hair and/or is capable of being bent or folded over a user's hair. Garrett discloses the claimed invention except for providing an air gap between a first sheet and an outermost sheet in an area between a seal sealing the sheets and a heat generating portion. Zeoli-Jones discloses a hair warming tool comprising an air gap between a first sheet 16 and an outermost sheet 18 in an area between a seal (seam 20 and adjacent area) sealing the sheets and a heat generating portion 68 (see, e.g., Fig. 4). This configuration facilitates manufacturing by allowing the heat generating means to reside in a unit configuration that can be easily inserted into the device (see, e.g., Fig. 4 and col. 4, lines 23-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have formed the seams or margins of the device of Garrett to comprise an air gap between a seal at the margin of the sheets and the heat generating means, in view of Zeoli-Jones, in order to facilitate manufacturing by allowing the heat generating means to reside in a unit configuration that can be easily inserted into the device. Even absent the discussion regarding manufacturing in Zeoli-Jones, it would have been obvious to have formed the margin or seam or seal in the manner shown in Zeoli-Jones, as such a construction is one of several known approaches a person of ordinary skill in the art would have used. Upon further consideration, it does not appear that there is anything in particular that is special about the claimed seal or air gap that is not already known and practiced in the art. Regarding the heating composition comprising sodium chloride, activated carbon, water-absorbent

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polymer and vermiculite, it would have been further obvious to have used any of these known materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Moreover, it also would have been obvious to have provided the materials in any of numerous ranges since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. It would have likewise been obvious to have selected a conditioner containing an organic acid, a pH in the range of 2 to 4.5 and/or an emulsification temperature in the range of 55 to 60 degrees Celsius, as again, this would only involve the selection of known materials on the basis of their suitability for the intended use and a determination of an optimum or workable range, both of which have been found to be obvious to a person of ordinary skill in the art. It also would have been obvious to have formed the heating part as a single unit or as a plurality of heating parts as the joining and separating of elements of an invention has been held to involve only routine skill in the art (see, e.g., *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893)). Regarding the method claims, it would have been obvious to fold the device over the hair or to leave a portion of the roots unwrapped, and so forth, because these are nothing more than examples of numerous known ways that hair is treated and it is predictable that a person of ordinary skill in the art would choose to use the device in various configurations and positions, such as these, on a user's head.

***Allowable Subject Matter***

Applicant's amendment filed 05 June 2008 appropriately resolves the outstanding rejections pertaining to technical matters; however, upon further consideration of the limitations added to the claims on 27 December 2007, and in view of the prior art, new grounds of rejection have been set forth above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. Please leave a detailed voice message if examiner is unavailable. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733